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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 LEZLIE J. GUNN,

8 Plaintiff(s),

Case No. 2:17-CV-72 JCM (GWF)

ORDER

9 v.

10 HANS-PETER WILD,

11 Defendant(s).

12
13 Presently before the court is defendant Hand-Peter Wild's motion to dismiss plaintiff's
14 original complaint. (ECF No. 7). Plaintiff Lezlie Gunn did not file a response, and the time to do
15 so has since passed.

16 Also before the court is defendant's motion to dismiss plaintiff's amended complaint.
17 (ECF No. 13). Plaintiff filed a response (ECF No. 14), to which defendant replied (ECF No. 17).

18 Also before the court is plaintiff's motion for leave to file a second amended complaint.
19 (ECF No. 32). Defendant filed a response (ECF No. 33), to which plaintiff replied (ECF No. 36).

20 Also before the court is plaintiff's motion to file a supplement to her response to
21 defendant's motion to dismiss. (ECF No. 37). Defendant filed a response (ECF No. 39), to which
22 plaintiff replied (ECF No. 40).

23 Also before the court is plaintiff's motion for leave to file supplemental evidence in support
24 of plaintiff's opposition to defendant's motion to dismiss. (ECF No. 42). Defendant filed a
25 response (ECF No. 44), to which plaintiff replied (ECF No. 45).

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1 **I. Background**

2 This action arises from the alleged breach of a Release and Settlement Agreement (“RSA”),
3 as well as allegations that defendant is liable to plaintiff based on multiple tort-based claims. (ECF
4 No. 11).

5 Defendant is a former citizen and resident of Germany, and is a current citizen and resident
6 of Switzerland. (ECF No. 11 at 2). Plaintiff had a “personal and professional relationship” with
7 the defendant for over thirty years. *Id.* at 2–3. On December 21, 2015, plaintiff and defendant
8 entered into a RSA to “resolve the parties’ rights and obligations related to other previously
9 established claims, contracts, obligations[,] and long-standing agreements.” *Id.* at 3. The RSA
10 does not contain a forum selection clause.¹ (ECF No. 14-8). The RSA does contain a choice-of-
11 law provision indicating that “[t]he Agreement shall be enforced in accordance with the laws of
12 the State of Nevada” *Id.*

13 Defendant fulfilled part of the RSA when he wired \$60 million dollars to plaintiff. (ECF
14 No. 11 at 3). Plaintiff allegedly continued to fulfill her duties under the RSA while defendant
15 purportedly failed to complete his terms of the contract. *Id.* at 4. Specifically, plaintiff alleges,
16 *inter alia*, the following five breaches of the RSA: (1) “[defendant] failed to pay all of the agreed-
17 upon expenses”; (2) “[defendant] ceased paying for plaintiff’s medical insurance”; (3) defendant
18 failed to pay \$20 million dollars towards an education fund; (4) defendant failed to pay plaintiff’s
19 yearly gift amount; and (5) defendant “failed and refused to provide various items throughout the
20 year to emergency service departments.” *Id.* In June 2016, defendant allegedly acknowledged his
21 breaches to the plaintiff in front of his German lawyer while sailing on a yacht in an unidentified
22 location, and defendant promised to immediately cure the breaches. *Id.* at 5. However, plaintiff
23 alleges that he has not cured the breaches. *Id.*

24 Beginning in April 2016, and continuing for several months, defendant attempted to have
25 plaintiff sign a power of attorney. *Id.* The document was written in German and, despite plaintiff’s

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27 ¹ Plaintiff alleges that both parties understood that Nevada would be the forum due to her
28 Nevada residency, citizenship, and “lack of understanding of the German language or German or
Swiss law.” (ECF No. 14 at 8.). Additionally, plaintiff states that Nevada would be the forum
because defendant did not require Switzerland to be the forum as with all of his other contracts.
Id. Defendant disputes both of these assertions. *See* (ECF No. 13).

1 requests, defendant provided nothing more than a verbal translation. *Id.* at 6. Plaintiff did not sign
2 the document. *Id.* At one point, defendant allegedly trapped plaintiff in his kitchen, demanded
3 she sign the document, and then “attacked plaintiff in an attempt to end her life” when she refused
4 to sign the document. *Id.* at 6–7.

5 Since the alleged attempt on plaintiff’s life, defendant has purportedly taken several steps
6 to have plaintiff sign the power of attorney and has “done nothing but terrorize plaintiff.” *Id.* at
7 9–10. Defendant allegedly sent “extremely disparaging and vicious emails about plaintiff to her
8 brothers” and to “hundreds of [plaintiff’s] friends and coworkers.” *Id.* at 11. Defendant has also
9 allegedly “made non-stop false, vicious[,] and defamatory statements about plaintiff to countless
10 people.” *Id.* In October 2016, defendant informed plaintiff that he “was revoking the RSA.” *Id.*
11 at 7.

12 Another term of the RSA required defendant to return plaintiff’s belongings to her upon
13 plaintiff’s request. *Id.* at 12. The belongings are allegedly valued at more than \$10.4 million
14 dollars. *Id.* Despite plaintiff’s repeated requests for the return of her belongings, she “has no idea
15 where the container is that holds her belongings.” *Id.* Plaintiff alleges that defendant intimidated
16 and coerced his employees to not comply with plaintiff’s “reasonable” requests to return her
17 property. *Id.*

18 Furthermore, plaintiff alleges that defendant is a holdover tenant on plaintiff’s properties.
19 (ECF No 11 at 13). Despite plaintiff’s numerous requests, defendant allegedly “continues to
20 occupy Plaintiff’s properties without payment.” *Id.* Defendant allegedly paid plaintiff in the past
21 for occupancy. *Id.*

22 On January 7, 2017, plaintiff filed her initial complaint (ECF No. 1). On March 3, 2017,
23 defendant filed a motion to dismiss for lack of personal jurisdiction and *forum non conveniens*
24 (ECF No. 7). Plaintiff then amended her complaint on March 14, 2017. (ECF No. 11).

25 Plaintiff’s amended complaint states the following eight causes of action: (1) breach of
26 contract; (2) breach of implied covenant of good faith and fair dealing; (3) unjust enrichment; (4)
27 fraudulent or intentional misrepresentation; (5) conversion; (6) defamation; (7) unreasonable
28 publicity given to private facts; and (8) punitive damages under NRS 42.005. (ECF No. 11).

1 On March 28, 2017, defendant filed a motion to dismiss the amended complaint for lack
2 of personal jurisdiction and *forum non conveniens*. (ECF No. 13).

3 **II. Legal Standard**

4 *a. Personal jurisdiction*

5 Federal Rule of Civil Procedure 12(b)(2) allows a defendant to move to dismiss a complaint
6 for lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). To avoid dismissal under Rule
7 12(b)(2), a plaintiff bears the burden of demonstrating that its allegations establish a *prima facie*
8 case for personal jurisdiction. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008).
9 Allegations in the complaint must be taken as true and factual disputes should be construed in the
10 plaintiff's favor. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).

11 "When no federal statute governs personal jurisdiction, the district court applies the law of
12 the forum state." *Boschetto*, 539 F.3d at 1015; *see also Panavision Int'l L.P. v. Toeppen*, 141 F.3d
13 1316, 1320 (9th Cir. 1998). Where a state has a "long-arm" statute providing its courts jurisdiction
14 to the fullest extent permitted by the due process clause, as Nevada does, a court need only address
15 federal due process standards. *See Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 134 P.3d
16 710, 712 (Nev. 2006) (citing Nev. Rev. Stat. § 14.065); *see also Boschetto*, 539 F.3d at 1015.

17 An assertion of personal jurisdiction must comport with due process. *See Wash. Shoe Co.*
18 *v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th Cir. 2012). Two categories of personal
19 jurisdiction exist: (1) general jurisdiction; and (2) specific jurisdiction. *See Helicopteros*
20 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413–15 (1984); *see also LSI Indus., Inc. v.*
21 *Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000).

22 General jurisdiction arises where a defendant has continuous and systematic ties with the
23 forum, even if those ties are unrelated to the litigation. *See Tuazon v. R.J. Reynolds Tobacco Co.*,
24 433 F.3d 1163, 1171 (9th Cir. 2006) (citing *Helicopteros Nacionales de Columbia, S.A.*, 466 U.S.
25 at 414–16). "[T]he plaintiff must demonstrate the defendant has sufficient contacts to constitute
26 the kind of continuous and systematic general business contacts that approximate physical
27 presence." *In re W. States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1131 (D. Nev. 2009)
28 (internal quotation marks and citations omitted). In other words, defendant's affiliations with the

1 forum state must be so “continuous and systematic” as to render it essentially “at home” in that
2 forum. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 760–61 (2014).

3 Specific jurisdiction arises where sufficient contacts with the forum state exist such that
4 the assertion of personal jurisdiction “does not offend ‘traditional notions of fair play and
5 substantial justice.’” *Int’l Shoe Co.*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457,
6 463 (1940)). The Ninth Circuit has established a three-prong test for analyzing an assertion of
7 specific personal jurisdiction:

8 (1) The non-resident defendant must purposefully direct his activities or
9 consummate some transaction with the forum or resident thereof; or perform some
10 act by which he purposefully avails himself of the privilege of conducting activities
11 in the forum, thereby invoking the benefits and protections of its laws;

12 (2) the claim must be one which arises out of or relates to the defendant’s forum-
13 related activities; and

14 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
15 *i.e.*, it must be reasonable.

16 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). “The plaintiff bears
17 the burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either of
18 these prongs, personal jurisdiction is not established in the forum state.” *Id.* (citations omitted).

19 *b. Leave to amend*

20 Federal Rule of Civil Procedure 15(a) provides that “[t]he court should freely give leave
21 [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The United States Supreme Court
22 has interpreted Rule 15(a) and confirmed the liberal standard district courts must apply when
23 granting such leave. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Specifically, the Supreme Court
24 explained:

25 In the absence of any apparent or declared reason—such as undue delay, bad faith
26 or dilatory motive on the part of the movant, repeated failure to cure deficiencies
27 by amendments previously allowed, undue prejudice to the opposing party by virtue
28 of allowance of the amendment, futility of the amendment, etc.—the leave sought
should, as the rules require, be “freely given.”

Foman, 371 U.S. at 182.

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1 **III. Discussion**

2 *a. Motion to dismiss the original complaint*

3 Defendant filed a motion to dismiss plaintiff’s complaint. (ECF No. 7). Thereafter,
4 plaintiff filed an amended complaint. (ECF No. 11). Defendant then filed a motion to dismiss the
5 amended complaint. (ECF No. 13). Given this procedural history, the court will deny defendant’s
6 motion to dismiss the original complaint as moot.

7 *b. Motion to dismiss amended complaint*

8 In defendant’s motion to dismiss plaintiff’s amended complaint, defendant argues that
9 dismissal is appropriate pursuant to Federal Rule of Civil Procedure 12(b)(2) because the court
10 lacks personal jurisdiction. (ECF No. 13). Defendant argues in the alternative that the court
11 should dismiss plaintiff’s claims under the doctrine of *forum non conveniens*. *Id.*

12 *i. General jurisdiction*

13 As an initial matter, no general jurisdiction exists over defendant in Nevada. Plaintiff’s
14 amended complaint asserts “[u]pon information and belief, Defendant, Wild, is, and at all times
15 relevant hereto, an individual, recently a citizen and a resident of the Country of Switzerland and
16 previously a resident and citizen of the Country of Germany.” (ECF No. 11). As defendant is a
17 citizen of Switzerland, he is not “at home” in Nevada. *See Daimler*, 134 S. Ct. at 760–61
18 (describing the general jurisdiction analysis for individuals).

19 Plaintiff argues that defendant is “at home” in Nevada because of his semi-frequent travels,
20 membership to a golf club, business dealings with the Nevada incorporated Wild Affiliated
21 Holdings, Inc. (“WAH”). (ECF No. 11 at 7–9). However, defendant’s visits and his membership
22 in a golf club are neither systematic nor continuous enough to establish him “at home” in Nevada.
23 *See Tuazon*, 433 F.3d at 1171 (requiring systematic and continuous ties with the forum for general
24 personal jurisdiction to exist).

25 That WAH is incorporated in Nevada is similarly insignificant. Plaintiff argues that
26 because WAH was incorporated in Nevada and because defendant “conducted numerous business
27 meetings for his Nevada company in Nevada,” that general jurisdiction exists. (ECF No. 14 at 11–
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1 12). Defendant conducting business in Nevada on behalf of WAH does not establish him as “at
2 home.”² See *Daimler*, 134 S. Ct. at 761.

3 Plaintiff further argues that defendant’s contractual relationship with plaintiff (the RSA),
4 which is in part an agreement to compensate plaintiff for consulting services she provided to WAH,
5 subjects defendant to general personal jurisdiction in Nevada. (ECF No. 14 at 11–12). Plaintiff
6 also points to the choice-of-law provision in the RSA as suggestive of defendant’s consent to a
7 Nevada court exercising general personal jurisdiction over him. But merely executing a contract
8 with ties to a state will not subject a party to general personal jurisdiction in that state. See *Daimler*,
9 134 S.Ct. at 761.

10 Plaintiff also contends that defendant should be considered an automatic resident of the
11 United States for taxation purposes based on the amount of time defendant spent in the United
12 States in years prior to 2014. (ECF No. 14 at 12). As defendants note, this simply has no bearing
13 on whether defendant should be subject to general jurisdiction in Nevada. (ECF No. 17 at 4)
14 (citing *Daimler*, 134 S.Ct. at 761).

15 Finally, plaintiff contends that defendant maintained a Nevada-based cell phone for twelve
16 years as well as bank accounts in Nevada for his Nevada companies. (ECF No. 14 at 12). Plaintiff
17 further alleges that defendant is a holdover tenant on plaintiff’s properties in Nevada. *Id.* at 13.
18 Even when aggregated together with all of plaintiff’s other allegations, these alleged facts do not
19 demonstrate that plaintiff is essentially *at home* in Nevada.³

20 ii. *Specific jurisdiction*

21 Accordingly, to withstand dismissal under rule 12(b)(2), plaintiff must demonstrate that
22 her allegations establish a *prima facie* case for specific jurisdiction. See *Boschetto*, 539 F.3d at
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24
25 ² Plaintiff’s briefing confuses the tests for general jurisdiction and specific jurisdiction.
26 This confusion is best highlighted by the final sentence of her briefing regarding general
27 jurisdiction: “As a result of these minimum contacts, this Court has general personal jurisdiction
over Defendant.” (ECF No. 14 at 13). The minimum contacts analysis is not the appropriate
method for determining whether a court may exercise general jurisdiction over a defendant. See
Daimler, 134 S.Ct. at 761.

28 ³ Again, the minimum contacts analysis is not the test for general jurisdiction. See *Daimler*,
134. S.Ct. at 761).

1 1015. In other words, plaintiff must satisfy the first two prongs of the test for specific jurisdiction.
2 *See Schwarzenegger*, 374 F.3d at 802.

3 In *Walden v. Fiore*, the Supreme Court underscored the importance of a defendant's own,
4 direct contacts with the forum state in the specific-jurisdiction analysis. 134 S.Ct. 1115, 1126
5 (2014). The Supreme Court held that a Nevada district court could not exercise specific
6 jurisdiction over a Georgia police officer who, while working as a deputized DEA agent at a
7 Georgia airport, searched a Nevada-bound couple and seized almost \$97,000 in cash representing
8 legitimate gambling proceeds. *Id.* at 1119. The officer then drafted in Georgia what was alleged
9 to be a false and fraudulent probable cause affidavit to support a potential forfeiture action for the
10 seized funds. *Id.* at 1124.

11 The Supreme Court held that "it is the defendant, not the plaintiff or third parties, who must
12 create contacts with the forum State." *Id.* at 1126. The Court held that defendant's actions in
13 Georgia "did not create sufficient contacts with Nevada simply because he allegedly directed his
14 conduct at plaintiffs whom he knew had Nevada connections." *Id.* at 1125. The Court continued,
15 "[s]uch reasoning improperly attributes a plaintiff's forum connections to the defendant and makes
16 those connections 'decisive' in the jurisdictional analysis. It also obscures the reality that none of
17 [the officer's] challenged conduct had anything to do with Nevada itself." *Id.*

18 In sum, *Walden* clarified that "minimum contacts analysis cannot impermissibly [let]
19 plaintiff's contacts with the defendant and forum . . . drive the jurisdictional analysis." *Id.* at 1125
20 (internal quotations omitted).

21 The Ninth Circuit addressed personal jurisdiction post-*Walden* in *Picot v. Weston*, 780 F.3d
22 1206 (9th Cir. 2015), reiterating that "personal jurisdiction analysis must focus on the defendant's
23 contacts with the forum state, not the defendant's contacts with a resident of the forum." *Id.* at
24 1214. In *Picot*, plaintiff brought claims for declaratory judgment and tortious interference with a
25 contract. *Id.* at 1210. The court held that a California court could not exercise specific jurisdiction
26 over either claim. *Id.* at 1213, 1215. In considering plaintiff's claim for tortious interference with
27 a contract, the court noted,

28 [Defendant's] allegedly tortious conduct consists of making statements to Coats (an
Ohio resident) that caused HMR (a Delaware corporation with offices in Ohio) to

1 cease making payments into two trusts (in Wyoming and Australia). [Defendant]
2 did all this from his residence in Michigan, without entering California, contacting
3 any person in California, or otherwise reaching out to California.

4 *Id.* at 1215.

5 The Ninth Circuit treats purposeful availment and purposeful direction as separate methods
6 of analysis. *Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th Cir. 2012).
7 Purposeful availment is for suits sounding in contract, whereas purposeful direction is for suits
8 sounding in tort. *Schwarzenegger*, 374 F.3d at 802 (citing *Dole Food Co. v. Watts*, 303 F.3d 1104,
9 1111 (9th Cir. 2002)).

10 A. *Purposeful availment*

11 To meet the first two prongs of the purposeful availment analysis for specific jurisdiction,
12 a plaintiff must show that defendant purposefully availed himself of the privilege of conducting
13 activities within the forum state that give rise to plaintiff's claims. *Schwarzenegger*, 374 F.3d at
14 802. To determine this, the court will look at: "actions by the defendant *himself* that create a
15 'substantial connection' with the forum state," "affirmative conduct which allows or promotes the
16 transaction of business within the forum state," and "prior negotiations and contemplated future
17 consequences, terms of the contract and the parties' actual course of dealing." *Picot v. Weston*,
18 780 F.3d 1206, 1212 (9th Cir. 2015).

19 Courts are careful to distinguish defendant's affirmative conduct from tangential
20 connections to a forum that do not satisfy the Ninth Circuit's express aiming requirements. *Id.* at
21 1213. "[R]andom, fortuitous, or attenuated" contacts are not sufficient, and "a contract alone does
22 not automatically establish minimum contacts in the plaintiff's home forum." *Id.* "[T]he fact that
23 a contract envisions one party discharging his obligations in the forum state cannot, standing alone,
24 justify the exercise of jurisdiction over another party to the contract." *Id.* Further, a choice-of-law
25 clause referencing a particular forum's laws does not automatically confer specific jurisdiction to
26 the forum over a claim arising out of the contract. *See Burger King Corp. v. Rudzewicz*, 471 U.S.
27 462, 481–82 (1985).

1 Here, plaintiff alleges three claims sounding in contract: (1) breach of the release and
2 settlement agreement; (2) breach of the implied covenant of good faith and fair dealing; and (3)
3 unjust enrichment. (ECF No. 11).

4 Plaintiff argues in her briefing that specific personal jurisdiction is appropriate for various
5 reasons: (1) defendant incorporated WAH in Nevada; (2) the contract allegedly involved
6 compensation related to services plaintiff provided to WAH and defendant's other Nevada-based
7 companies; (3) defendant would conduct company business in Las Vegas; (4) defendant "routinely
8 conducted" management meetings in Las Vegas; and (5) defendant attended industry-related trade
9 shows in Las Vegas. (ECF No. 14). Defendant responds that plaintiff's allegations do not meet
10 the Ninth Circuit's exacting requirements for the exercise of personal jurisdiction in Nevada over
11 claims related to the RSA. (ECF No. 13).

12 Here, the RSA, standing alone, does not support the exercise of jurisdiction in this case.
13 Importantly, the RSA does not contain a forum selection clause, which, if present, would lend far
14 more support to plaintiff's assertion that both plaintiff and defendant knew that Nevada would be
15 the chosen forum for litigation.

16 Further, the RSA itself does not contain a single direct mention of compensation for
17 services related to any Nevada-based company or activity. *See* (ECF No. 14-8). The RSA does
18 not explicitly contemplate defendant transacting business pursuant to the RSA within the state of
19 Nevada or making any payments pursuant to the RSA within the state of Nevada. *See id.* In sum,
20 the RSA itself contains insufficient indicia that defendant attempted to meaningfully connect
21 himself to the state of Nevada through the RSA such that it would be reasonable for a court to
22 exercise jurisdiction over defendant for a claim arising out of the RSA. *See Picot*, 780 F.3d at
23 1213.

24 Furthermore, the choice-of-law clause in the RSA cannot by itself support the exercise of
25 personal jurisdiction. *See Rudzewicz*, 471 U.S. at 481–82 (holding that a choice-of-law provision
26 should not be ignored in the jurisdictional analysis, but when standing alone would be insufficient
27 to support jurisdiction). And plaintiff's status as a Nevada resident does not automatically confer
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1 personal jurisdiction over disputes arising out of a contract to which plaintiff is a party. *See id.* at
2 1214.

3 Plaintiff's other arguments to support the exercise of jurisdiction likewise fail to persuade
4 the court that the exercise of specific jurisdiction would be proper in this case. Any alleged
5 contacts defendant has with Nevada that relate to golf trips, trade shows, or management meetings
6 do not relate to the RSA and to plaintiff's claims sounding in contract. These contacts are best
7 classified as "random, fortuitous, or attenuated contacts," and do not demonstrate that this court
8 can exercise personal jurisdiction over claims unrelated to these contacts. *See Picot*, 780 F.3d at
9 1213.

10 Finally, a court in Nevada cannot exercise jurisdiction over defendant as related to
11 plaintiff's unjust enrichment claim, which is based on defendant's alleged status as a holdover
12 tenant.⁴ The complaint does not reference the location of any properties where defendant is a
13 holdover tenant, and therefore the complaint does not make out a *prima facie case* that specific
14 jurisdiction exists over these claims. *See Schwarzenegger*, 374 F.3d at 802.

15 *B. Purposeful direction*

16 For claims sounding in tort, the court considers purposeful direction, also known as the
17 "effects test." *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1206
18 (9th Cir. 2006).

19 The effects test requires that the defendant allegedly must have (1) committed an
20 intentional act; (2) expressly aimed at the forum state; (3) causing harm that the defendant knows
21 is likely to be suffered in the forum state. *Wash. Shoe*, 704 F.3d at 673 (internal citations and
22 quotations omitted). The key question is one of due process: would it be fair, based on defendants'
23 contacts with Nevada, for them to expect to defend themselves in a Nevada court?
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25
26 ⁴ In Nevada, an unjust enrichment claim cannot be based upon a valid, written contract.
27 *See Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747, 755–56
28 (1997) ("An action based on a theory of unjust enrichment is not available when there is an express,
written contract, because no agreement can be implied when there is an express agreement.").
Therefore, plaintiff's references to the RSA in her claim for unjust enrichment do not state a claim
upon which relief can be granted.

1 Here, plaintiff brings four claims sounding in tort: (1) fraudulent or intentional
2 misrepresentation; (2) conversion; (3) defamation; (4) unreasonable publicity given to private
3 facts. (ECF No. 11).

4 As to plaintiff's cause of action for fraudulent or intentional misrepresentation, the only
5 statement plaintiff alleges defendant made that would support the claim was a statement made
6 while he was on a yacht in an unknown location. (ECF No. 11 at 5). Plaintiff's complaint does
7 not establish a *prima facie* case for personal jurisdiction as to this claim, as there is no suggestion
8 that such conduct was expressly aimed at the forum state. The mere possibility of injury to a forum
9 resident is not enough to support the exercise of personal jurisdiction in this case. *See Walden*,
10 134 S.Ct. at 1125 ("minimum contacts analysis cannot impermissibly [let] plaintiff's contacts with
11 the defendant and forum . . . drive the jurisdictional analysis.").

12 As to plaintiff's cause of action for conversion, plaintiff's complaint does not establish a
13 *prima facie* case for personal jurisdiction over the claim. Although plaintiff alleges that the
14 location of the container containing her belongings is unknown, plaintiff identifies the last known
15 location of the container as being outside of the United States. *See* (ECF No. 11 at 12) ("Plaintiff
16 contacted numerous employees of [defendant] to inquire as to when her container would arrive in
17 the United States . . ."). Further, the RSA section that plaintiff alludes to in her complaint
18 references "personal property from any and all of [defendant's] properties located in Europe. (ECF
19 No. 14-8). A cause of action specifically addressed at defendant's alleged conversion of plaintiff's
20 items that occurred outside of the United States does not support the exercise of personal
21 jurisdiction over defendant in Nevada, even if defendant knew that plaintiff was a Nevada resident.
22 *See Walden*, 134 S.Ct. at 1125 (holding that defendant's allegedly unlawful taking of plaintiffs'
23 property in Georgia "did not create sufficient contacts with Nevada simply because he allegedly
24 directed his conduct at plaintiffs whom he knew had Nevada connections.").

25 Plaintiff's cause of action for defamation similarly does not support the exercise of specific
26 jurisdiction over the claim by a Nevada court. Plaintiff's complaint alleges that defendant has
27 made numerous disparaging, vicious, and defamatory comments to plaintiff's family, friends,
28 colleagues and German journalists. (ECF No. 11). However, plaintiff's complaint does not

1 contain a single specific allegation that would connect defendant's conduct to Nevada in a
2 meaningful way. Therefore, plaintiff's complaint does not support this court exercising specific
3 jurisdiction over the claim. *See Picot*, 780 F.3d at 1214 (holding that "personal jurisdiction
4 analysis must focus on the defendant's contacts with the forum state, not the defendant's contacts
5 with a resident of the forum.").

6 Finally, plaintiff's cause of action for public disclosure of private facts does not support
7 the exercise of personal jurisdiction in Nevada. The only direct reference to the cause of action
8 comes on page 18 of the complaint.⁵ This reference, which merely alleges that defendant
9 unreasonably disclosed private facts regarding plaintiff without providing any further information,
10 does not contain a jurisdictional hook to the state of Nevada. As the court has already noted,
11 alleged injury to a forum resident is not enough without more to support specific personal
12 jurisdiction. *See Walden*, 134 S.Ct. at 1125; *Picot*, 780 F.3d at 1214.

13 In light of the foregoing, the court finds that plaintiff has failed to establish a prima facie
14 case of personal jurisdiction. *See Schwarzenegger*, 374 F.3d at 802. As plaintiff has failed to
15 satisfy the first and second prong of the specific jurisdiction test, personal jurisdiction is not
16 established in Nevada. *See id.* Accordingly, the court will grant defendant's motion to dismiss
17 for lack of personal jurisdiction.

18 *iii. Forum non conveniens*

19 As the court holds plaintiff fails to establish personal jurisdiction over defendant, the court
20 need not address defendant's arguments regarding *forum non conveniens*.

21 *c. Motions for leave to supplement*

22 Plaintiff filed two motions for leave to file supplemental evidence in response to
23 defendant's motion to dismiss. Plaintiff hopes to offer evidence of (1) a declaration provided by
24 defendant's attorney in a separate case; (2) emails from defendant's attorney in the separate case
25 to defendant; (3) a letter relating to a charter flight in 2011; (4) an email correspondence relating
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28 ⁵ Although paragraph 121 states that plaintiff repeats and realleges every prior allegation
in the complaint as though set forth in her enumerated cause of action for unreasonable publicity,
none of the prior paragraphs contain an allegation of unreasonable publicity given to private facts.

1 to Indag Pouch Systems; (5) an email correspondence regarding contacting a tax consultant at
2 Ernst & Young in Las Vegas. (ECF Nos. 37, 42).

3 The court will deny plaintiff's motions. As defendant notes in his response, none of this
4 evidence weighs on the court's jurisdictional analysis, as it neither tends to establish that defendant
5 is "at home" in Nevada nor tends to demonstrate sufficient minimum contacts to support specific
6 jurisdiction.⁶

7 *d. Motion for leave to file an amended complaint*

8 Plaintiff filed a motion for leave to amend her complaint. (ECF No. 32). Plaintiff attached
9 to her motion a proposed second amended complaint. (ECF No. 32-1). Defendant's responded to
10 the motion, arguing that this court should deny leave to amend as amendment would be futile.
11 (ECF No. 33).

12 Here, the main dispute between the parties is whether amendment is futile. The primary
13 point of contention in the parties' briefings concerns paragraph 104 of plaintiff's proposed second
14 amended complaint. Paragraph 104 contains an allegation that defendant sent plaintiff's brothers
15 an email in an attempt to turn the family against plaintiff. (ECF No. 32-1). Plaintiff offers this to
16 support her claim for defamation.

17 Taking the allegation in the proposed second amended complaint as true, the court again
18 holds that plaintiff has not demonstrated that this court can exercise specific jurisdiction over
19 defendant regarding the defamation claim. The complaint never specifically alleges that defendant
20 knowingly sent an email or any other correspondence to a Nevada resident. Further, plaintiff
21 seemingly continues to argue that plaintiff's suffering of damages in Las Vegas, Nevada, as a result
22 of defendant's conduct is enough to satisfy the Ninth Circuit's tests for specific jurisdiction. (ECF
23 No. 32-1 at 19) ("Plaintiff has suffered damages in Las Vegas, NV as a result of [defendant's]
24 breach."). It is not. *See Picot*, 780 F.3d at 1214.

25 As is illustrated above, the proposed second amended complaint suffers from the same
26 deficiencies that defendant noted in his motion to dismiss. The proposed changes do not alter the

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28 ⁶ As the court is denying plaintiff's motion on the grounds that the evidence is irrelevant,
it will not consider defendant's alternative argument that the court should deny the motion because
the proffered evidence is not newly discovered evidence.

1 court's holding that personal jurisdiction does not exist over defendant in Nevada for the causes
2 of action in plaintiff's complaint. Plaintiff has already attempted to allege causes of action over
3 which the court can exercise personal jurisdiction twice to no avail. Further amendment is
4 therefore futile. *See Foman*, 371 U.S. at 182. The court will deny plaintiff's motion for leave to
5 amend.

6 **IV. Conclusion**

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion to
9 dismiss plaintiff's original complaint (ECF No. 7) be, and the same hereby is, DENIED as moot.

10 IT IS FURTHER ORDERED that defendant's motion to dismiss plaintiff's amended
11 complaint (ECF No. 13) be, and the same hereby is, GRANTED.

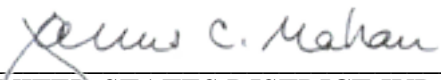
12 IT IS FURTHER ORDERED that plaintiff's first motion to supplement (ECF No. 37) be,
13 and the same hereby is, DENIED.

14 IT IS FURTHER ORDERED that plaintiff's second motion to supplement (ECF No. 42)
15 be, and the same hereby is, DENIED.

16 IT IS FURTHER ORDERED that plaintiff's motion for leave to file an amended complaint
17 (ECF No. 32) be, and the same hereby is, DENIED.

18 The clerk shall enter judgment accordingly and close the case.

19 DATED January 18, 2018.

20 
21 UNITED STATES DISTRICT JUDGE